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title: Discussion on motion of consideration of the Rights of Transgender Persons Bill, 2014 moved by Shri Baijayant 'Jay' Panda as passed by Rajya Sabha.

SHRI BAIJAYANT JAY PANDA (KENDRAPARA): Sir, I beg to move:

"That the Bill to provide for the formulation and implementation of a comprehensive national policy for ensuring overall development of the transgender persons and for their welfare to be undertaken by the State and for matters connected therewith and incidental thereto, as passed by Rajya Sabha, be taken into consideration."

I rise to move this Bill which is a milestone Bill. In many ways, the Rights of Transgender Persons Bill, 2014 is a very historic Bill. As the whole House is aware, this Bill, from 2014, has been in the queue for being taken up for discussion for the last three Sessions where the just concluded discussion on the Compulsory Voting Bill took priority and so many Members participated.

This is also a historic Bill for several other reasons. One of the most important reasons is that this Bill comes to us after having been passed in the other House, the Rajya Sabha. This is historic because for nearly half-a-century, no Private Members' Bill has become law, as we experienced just now, even a Bill that has enormous support from across the political spectrum. For the last nearly half-a-century, our tradition has become that based on the Government assurances the Member moving that Bill withdraws the Bill and it does not become law.

17.13 hours (Shri Konakalla Narayana Rao *in the Chair*)

For that reason, this Rights of Transgender Persons Bill, 2014, having been passed in the Rajya Sabha, assumes a very historic angle in that it has the potential for the first time in nearly half-a-century that we in this august House can pass a Private Members' Bill and make it a law which has not happened for all these decades. It is another matter that the Government itself supports this idea and is preparing a Bill along these lines. I will touch upon that. ...(*Interruptions*)

Finally, this Bill is historic for three very fundamentally important Constitutional principles which it impinges--the right to equality, article 15 of the Constitution; the right to life with dignity and personal liberty, article 21 of the Constitution; and to some extent, the freedom of speech as prescribed within our Constitution in article 19. Why these are important because, taken together, these Articles provide that our Constitution must treat every citizen equally irrespective of his caste, creed, religion and it ought to be the case irrespective of his gender orientation, of his sexual orientation.

This is not something which is the personal view of mine, this has brought support across the political spectrum. Even the Government is proposing to bring in a Bill. Most importantly, it has the backing of our highest courts – it has the backing of our High Courts; it has the backing of our Supreme Court.

I would just like give a timeline of what progress has happened on this front. But, Sir, it is important for all of us to recognize it. If we look at our own history, if we look at our own culture, we will find that we have a rich culture. I grew up at Bhubaneswar in Odisha and just 30 miles away from where I grew up is the historic Black Pagoda, the Temple of Konark, the Sun God. If you go and look at the sculptures at Konark and many other such temples throughout the country, you will see that we have a rich history, which is inclusive, which allows people of any orientation, people of any life style choice to be allowed to live as free citizens, to be allowed to live life as they wish without discrimination. The thrust of this Bill then is that – shall we tolerate discrimination against a section of our population when all they wish to do is live life by their own choice, without causing harm to anybody, without breaking the law?

The other great angle of this Bill is compassion. The world's largest democracy has shown repeatedly, time and again, that our greatness comes not from our best achievements, our greatness comes not from the fact that we are a nuclear power, that we are a space power, our greatness lies in the fact that we have provided a platform where the weakest of the weak will get the same treatment under law as the rich, as the powerful, as people of any background. Our democracy, our republic has provided this opportunity for categories of our citizens who have been discriminated against for centuries and sometimes for millennia. Over the last nearly 70 years, many such discriminated categories of people – be it of certain caste, be it of certain tribes, be it of any background – have been treated equally by the Constitution, by the law and have been able to get their rights backed up from this august House and the other august House. But, Sir, if you look at the transgender community, that is not the case.

All of us are aware that transgenders are treated pejoratively. They are called by names which are not worth repeating – it is not parliamentary to use those names. They are treated not with compassion, they are treated with discrimination, they are jeered at and they are, in fact, prevented from living a normal life. There is plenty of evidence. All of us are aware of it that most transgenders are reduced to begging because they do not get the same opportunities if they want to hold the jobs; they do not get the same opportunities, when they try to get education. We must have a big heart, we must have compassion for this community, we must treat them with dignity, we must treat them as human beings. I will come to some of their numbers. ...(*Interruptions*)

श्री पृथ्वी सिंह पटेल (दमोह) : इसमें एजुकेशन में प्रॉब्लम नहीं है। हमारे यहां एक एमएलए रही हैं, वह एम.ए. थीं।

श्री बैजयंत जे. पांडा : सर, ये एक्सेप्शंस हैं। मैं आपको उदाहरण दूंगा। ...(*व्यवधान*) I take the hon. Member's intervention in the right spirit. As the hon. Minister has

been pointing out, recently, based on court orders, we have had a police officer who is a transgender. We also have people that have contested in local elections, in urban elections, in panchayat elections and there are many others. ...(*Interruptions*)

SHRI BHARTRUHARI MAHTAB : There is a principal in West Bengal.

PROF. SAUGATA ROY (DUM DUM): He is a principal in a college there.

SHRI BAIJAYANT JAY PANDA: Hon. Members from my home State Odisha and my neighbouring State West Bengal are pointing out that there exists an example of a principal. But, Sir, that is not the point. I am sure that there are many such exceptions of brave people supported by society in their parts of the country. The reality is that a large majority of the transgender community does not enjoy equal treatment. They do not enjoy dignified treatment. Let me give you an example. When they are beaten up, when they are stolen from and when they go and try to file an FIR, they do not receive the same treatment that an average Indian citizen receives. They are often jeered at. There are examples where police people are also kind and treat them properly, but that should be the norm and not the exception.

Sir, let me give you some points as to how this has developed. In 2009, the Election Commission took a very important first step by allowing the so-called eunuchs to choose their gender as 'other' on the ballot paper. Instead of being just male or female, they were allowed to choose 'other'. This was a very significant first step taken by the Election Commission. In 2011 Census, for the first time, transgenders were counted as a separate category. Until then, they were counted as males which itself is odd because transgenders can be born in the form of a female and choose to be a male or *vice versa*.

Sir, there are some estimates, and these estimates vary quite a lot, as to what section of the population are we talking about, what numbers are we talking about. By one estimate, there are just under five lakh such people – 4.9 lakh transgenders, but there are many other estimates which count the number of transgender population in the country at nearly 25 lakhs. This number could be much larger because the stigma attached to it is such that people try hard not to live life as they choose, but to hide their gender orientation, to hide their lifestyle. That is not a life of dignity.

Sir, I once again appeal to all my colleagues in this House that this may be a small minority community because it may be only 25 lakh people or a little more than that. Since we do not know their exact number, we have to count them. That is one of the requirements of the Bill that they may be properly enumerated.

The big thing here is that we must have compassion. No matter how small this group of citizens is, they must be treated as equal. Just like our Constitution provides equal rights to dalits, to adivasis, to minorities, we must ensure that no matter how small a component of our population they constitute, they must be treated with dignity. That is the basic essence of this Bill which I have the privilege of moving here. Once again, I point out that this Bill was moved in the other House and passed, which was a historic thing, in April of last year by our hon. colleague, Shri Tiruchi Siva, and in this House also, it has much support from across the aisles. There are colleagues wanting to speak on this Bill from my right to my left, everywhere.

Sir, of the transgender community, who have been identified, about 66 per cent live in rural areas. They face a double difficulty when they try to take advantage of any of the benefits that the Government provides and any of the schemes that the Government has. Take the example of anti-poverty scheme. When they try to get admission in schools and colleges they do face discrimination. Despite the examples that some of my hon. colleagues have pointed out, the fact is that a vast majority of them face discrimination and this is something we should not tolerate, this is something we have to do away with.

Sir, the proportion of those who have jobs among the transgender community is only 38 per cent. Let us just think about this for a couple of seconds. Fully, 62 per cent of the transgender community do not have jobs. We know that in India, jobs are a challenge. We know for a fact that India needs to generate one million jobs per month and we are barely creating a fraction of that, but the fact is that the transgender community faces a much greater discrimination when it comes to getting jobs.

From 2013 onwards, the transgender community has achieved another milestone when they were recognised as a separate category to be issued *Aadhaar* Cards. This is the Unique Identification form using biometrics and this was another major development. In 2014 came the most significant development so far when the Supreme Court was hearing a case of National Legal Services Authority (NALSA) *versus* the Union of India and while acknowledging the plight of transgender persons, it recognised the community as a third gender. So, for the first time besides the Election Commission and besides the Census, the Supreme Court itself accepted in 2014 that in all Governmental forms besides having male and female you can have 'other' or the third gender.

In 2015, the Reserve Bank of India has also taken this in the same spirit one step forward and has asked banks to add third gender column in all of its forms. From 2015, several Universities have started taking progressive steps. So, it is true when hon. Members point out that some members of the transgender community are getting admission, but that needs to be spread to everybody. Delhi University and Jamia are going to follow the example set by Jadhavpur University, which was the first University of a national stature to introduce the third gender option in all its official forms.

The guiding principle of this Bill is that one's gender orientation and sexual orientation should not go against them for being discriminated against in any fashion or any way. This impinges one area where there has been a lot of heated debate and a lot of controversy also. So, I want to touch upon it a little bit. It has to do with Section 377, which criminalises homosexuality and LGBT community. There have been efforts to challenge it. Only in the last Session there was an attempted Private Members' Bill in this House, which was not accepted for introduction because many Members here did not feel that it was appropriate. As many Members are undoubtedly aware, this is a matter, which has now gone to a Constitutional Bench of the Supreme Court. This is not the subject matter, but it is somewhat slightly related. So, I will come to that issue.

On Section 377, it is a British-era law and it criminalises certain activities and criminalises homosexuals. There was a Delhi High Court judgement some years ago, which said that this was not Constitutional that it discriminated against certain categories of citizens, but that was overruled by the Supreme Court. This is a battle that has been going on by a certain organisation called the Naz Foundation, which has been fighting

in the courts on the Constitutional principle and although the Supreme Court had overruled the Delhi High Court it has recently accepted the petition to review its own decision.

SHRI BHARTRUHARI MAHTAB: It has been sent to a greater Bench.

SHRI BAIJAYANT JAY PANDA: As I understand, it is going to be a seven-Judge Constitutional Bench and while that matter is there in the Supreme Court, I think that we will have to wait and see as to what decision they take and then we can respond appropriately.

My point here is that today's subject on Transgender Bill is not about Section 377. It is because here we are talking about treating them with dignity; about not discriminating against them; and about making sure that law treats them as equal citizens. But here we are not talking about the repeal of Section 377. It is a bigger issue; it is a wider issue; and this is not exactly the same issue, but undoubtedly there is some small overlap because the larger community of Lesbians, Gays, Bisexuals, Transgender, Queer (LGBTQ) is far larger than the 25 lakh, which have been enumerated only for transgender rights. But many people feel that these two are linked in the sense that once we take a view point that we must treat our transgender community and citizens with equal rights, with equal dignity, with equal treatment of the law, then that is a Constitutional principle that is being set.

But these, I would say, are two parallel things that are going on. They are not exactly the same because this Bill does not propose to do anything with Section 377. This is purely about dignity and equality before the law for the transgender community.

Sir, I have alluded to our own history and our own culture; I have alluded to our own temple architecture; if you look at our own scriptures, if you look at our own mythology, there are plenty of examples that transgender in our history, in our mythology, and in our scriptures are not uncommon.

PROF. SAUGATA ROY: Shikhandi in Mahabharat is one such example.

SHRI BAIJAYANT JAY PANDA: Yes, Shikhandi in Mahabharat is one, but there are so many other examples. I am not an expert in the subject, but I have heard that there are experts in the subject who have written about it. ...(*Interruptions*)

SHRI BHARTRUHARI MAHTAB: Sir, I have a question to the speaker. Before he concludes, I think it will be better for him to answer this. In the Hindi version of this Bill, the word 'transgender' has been translated into "विपरीत लिंग"। मैं यह जानना चाहता हूँ, मेरी हिन्दी इतना मजबूत नहीं है किंतु यहाँ कई लोग हैं जिनको हिन्दी अच्छी तरह आती है, विपरीत लिंग क्या है? इस बारे में थोड़ा रोशनी डालिए।

SHRI BAIJAYANT JAY PANDA: My hon. Colleague Shri Mahtab has brought up an issue with which I am not familiar because I have not filed the Hindi version of the Bill. I have filed the English version of the Bill. ...(*Interruptions*)

श्री भर्तृहरि महताब : आपको हिन्दी अच्छी तरह से आती है, इतने सारे विद्वान लोग बैठे हुए हैं। ...(*Interruptions*)

SHRI BAIJAYANT JAY PANDA: I can only talk about the English version of the Bill. महताब जी आप पृष्ठ यह पूछिए कि उनको आती है या नहीं आती? I think this itself indicates that we put too much emphasis on gender, whereas we should put emphasis on humanity.

HON. CHAIRPERSON : This Bill comes from Rajya Sabha along with the translated version.

SHRI BAIJAYANT JAY PANDA : Sir, we can ask them for a clarification. My point is, उनको आती है या उनको आता है, sometimes, we, the people from the East, make a mistake because we treat gender differently in our language and that is the very point. The point is we treat gender equally and I think we should all treat gender equally.

PROF. SAUGATA ROY: Languages are gender neutral.

SHRI BAIJAYANT JAY PANDA : The whole point of this Bill is that we treat them as human beings, not as males, females, others or transgender. We should treat them as human beings. We must all have big hearts; we must all have compassion for people who are different from us, and that is the only purpose of this Bill.

I was going to also allude that apart from our own legacy, apart from what we have learnt from our history and from our culture, other countries are beginning to take steps to ensure that transgender community in their countries are treated equally. We could consider, for example, the example of Portugal, which is believed today to have the most expeditious and transparent procedures for establishing gender identity –for those not just in the transgender community, but in any of these communities. We can take the example of Argentina which has not the cumbersome procedures because sometimes people have gender reassignment medical procedures; it does not require any of that. It requires people to choose their lifestyle and treat them on that basis, taking their word for it.

Sir, this Government has started procedures unrelated to this in many ways saying that a citizen's self-certification on many kinds of forms should be good enough. It should not require a Gazetted Officer; it should not require a Government servant to authenticate what the citizen is self-declaring. This is the principle. You should look at some other countries to see how they have provided for it. You should look at our Election Commission, Reserve Bank of India, Census is already doing it, and this should apply all across – apply to all Government forms; apply to all education application forms; apply to job applications because a citizen's self-certification should be enough, unless there is evidence otherwise; unless there is evidence that the citizen is not to be relied upon.

Sir, I come to the point that the Government itself is supporting this move and had set up a Committee, taken some steps and has brought a Bill. Here, I want to point out a very important and significant difference between what the Government's Bill proposes and what this Private Member's Bill proposes. Although both the Bills provide principles that should guide the Government authorities, one key principle of 'respect for difference and acceptance of transgender persons as part of human diversity and humanity', is not there in the Government Bill. This is a core fundamental principle which is there in this Bill which has been passed by the Rajya Sabha and which is here before us today. Respect for diversity and acceptance of that diversity is what is crucial. That is why, it is important that we must consider this Bill in depth. A point will come when we

will have to take a decision as to what we want to do with this Bill.

I would like to mention to my hon. colleagues that we have the opportunity of making history. We have the opportunity if we pass this Bill for the first time in nearly half a century that we, Members of Parliament, can initiate and make law and not depend only on the Government of the day to bring law. We are not at different purposes. The Government itself wants to bring a similar law. But if we pass this Bill and make it a law, it would be a historical going back to what we had until the early 1970s when it used to be that Private Members' Bills could get passed. This is a point worth dwelling on for a little bit. If you look at democracies all over the world, it is not only Government Bills which get passed. If you look at democracies like America, if you look at UK, Canada, Germany and Australia, it is quite common that ordinary Members of Parliament whether they be part of the governing side of the benches or from the opposition side of the benches, they can introduce Bills. If these Bills are popular, if they can make a very good argument and if they can seek the support of their colleagues, such Bills can pass.

I want to appeal to all Members, those who are present here today and those who are absent but may be here when the time comes to take the decision on this Bill, please keep this in mind that we have got this historic opportunity since the early 1970s for the first time. It would be a wonderful thing if we can pass the law. We are not against the Government. We are not against the Government's Bill. Both are very similar in many ways. I would also beseech the Government that in the case of this Bill, being that it has already been passed by the Rajya Sabha, being that it is something not controversial – this Bill is not controversial -- this Bill has the support of the Supreme Court; this Bill has the support of the other House; this Bill has the support of any right-thinking person. Who would want to have a small heart? Who would want to discriminate against transgender people? We can make history. We can pass this Bill. The Government wants to implement this law in any case. We can pass this Bill and create history that our Parliament goes back to its old glory that any Bill which has support of the majority of the Members, can become the law. We saw a Bill now which has enormous support from a lot of people. But it has become tradition that Bills are not put to the vote, that they are withdrawn by the proposer. I believe that we should break from that and go back to our original tradition. I believe, we should go to the tradition when anyone of us can introduce a Bill. If we can get the support of enough Members of Parliament, that should become law. We have that opportunity here today for the first time.

This Bill will make it law; make the constitutional principle of non-discrimination into law so that when people of the transgender community go to file police cases, they will be treated with equality and dignity. When they go for jobs, they will be treated with equality and dignity. It will provide incentives for the private sector to provide jobs to them.

I tell you why it becomes important for us to consider passing this Bill. Although the Government is in the same line of thinking that the constitutional principle of equality can be made into a Bill for transgenders, an Expert Committee was set up by the Ministry of Social Justice and Empowerment to study the problems faced by the transgender community and to make suggestions. That Committee gave its Report as far back as January 27, 2014. These were forwarded to all the States and Union Territories for appropriate action and 16 States and Union Territories have responded. The others, at this time of this Bill, have not yet responded.

I gave the example of the Supreme Court in the NALSA case which has ruled that they should not be discriminated against and that they should be treated as the third gender. However, the Ministry filed a petition in September 2014 seeking clarifications to this judgment in the Supreme Court. As a result, this matter has got stuck, it is pending and a final decision has not yet been taken. So, although the Supreme Court had given a ruling, it is not a fact that throughout the Government, all these papers, all the forms of different Departments do not have yet have the option of the third gender because it is stuck in court. Some States indeed are taking a progressive stand. I think it is very heartening that the State of Kerala in 2015 took a progressive step to provide a level-playing field for equality, granting equal access to social and economic opportunities, resources and services, the right to equal treatment under the law, equitable rights in all decision making bodies and so on and so forth for the transgender community.

I was going to mention some of the cases that the other hon. Members have pointed out such as in Tamil Nadu, the first transgender police Sub Inspector, Pritika Yashini by the order of the Madras High Court which also mandated inclusion of third category in the next recruitment process. And the good news is that only on the 15th of this month she has got her joining orders and taken charge. This is again one historic step. But these are few steps and that needs to change.

Other countries are also going ahead. I gave the examples of countries which are far away. Let me give you the example of next door Nepal. In Nepal, Bhoomika Shreshtha is an activist who became the first Nepali citizen to travel on a passport carrying the designation 'O' for Other rather than 'M' for Male or 'F' for Female. And this could be the future for international travel so that there is no discrimination.

I had referred to the court judgments in both the Delhi High Court and Supreme Court judgments on the Constitutional principle of equality. I think it is important to read out what Justice Mridul in the Delhi High Court judgment of October 2015 held in favour of a transgender citizen. I quote this. "Every human being has certain inalienable rights and gender identity and sexual orientation are fundamental to the right of self determination, dignity and freedom of the individual". This is something that we should take to our heart and stop the practice of discriminating against them in various fields.

Many other things are happening. Films are getting made, documentaries are getting made, film festivals are happening. One of the most heartening examples was again just this month when it was reported that in Maharashtra the police in Thane had started an initiative called Police Mitra, in which 1,350 transgender persons were given training including physical training, medical screenings, ID cards. And the most heartening thing is that they assist the police with law enforcement functions such as crowd control and traffic control. Can we think of a better example than this when the very places where they were getting discriminated against when they used to go to the police to seek justice, now here we have an example where the police are co-opting them, where the police are treating them in an inclusive manner, where they are getting the training, they are given the dignity of assisting the police for traffic control, for crowd control.

These are the sort of examples that we must support not just by cheering on such examples of course we must do that but by making it the law. We cannot just leave it as a Constitutional principle that every citizen must be treated equally. We must make the laws and we must undo the

laws that we have on our books for the last 200 years which provide discrimination against citizens. We must do that.

I gave the example of Thane Police in Maharashtra. I want to give the example of Kolkata Police. From January this year, they have accepted the West Bengal Government's proposal to empower transgender persons and accepting them into civic police volunteer force.

I realise I have spoken for quite sometime and there are other Members who wish to speak on this subject. I do not want to continue this for the sake of continuing it although I was hoping that we could take this into the next Session where we could have more Members and delve and take a decision on the historic opportunity that we have today for passing such a Bill, not just because it is about the rights of a minority community of transgender persons but also about the Constitutional opportunity today that we have of re-establishing the supremacy of Parliament and re-establishing that it is the job of Parliament to make laws; not just laws that are brought by the government of the day but laws that are suitable for the country, for this time.

The Government has no opposition to the principle of the law. In other cases, they say, 'Please withdraw this Bill. We will bring a similar Bill.' Here also they have prepared a Bill; it is not just that they are saying it. But here we are having the opportunity of this Bill being passed in the other House and if we can pass it in this House it would be a tremendous assertion of the supremacy of Parliament.

With this, I would like to submit that we may consider this Bill as an opportunity to impress upon the rest of the country that right from the highest temple of democracy, we are sensitive to the needs of every citizen, no matter how small their community is, no matter how marginalised their community is, we have the heart to bring them into the mainstream.

Thank you.

श्री जगदम्बिका पाल (दुमरियागंज): माननीय सभापति जी, मैं आपका अत्यंत आभारी हूँ कि मेरे सहयोगी श्री बैजयंत जे. पांडा द्वारा प्राइवेट मैम्बर्स बिल ट राइट्स ऑफ ट्रांसजेंडर पर्सन्स बिल 2014 पर बहुत प्रभावी ढंग से विचार प्रस्तुत किए गए हैं। यह प्राइवेट मैम्बर्स बिल राज्य सभा से 2014 में इंद्रोड्यूज और वहां से पास होकर सम्मानित सदन के समक्ष आया है। हमारी विधायिका का अधिकार है और विधायिका से देश की जनता अपेक्षा करती है कि हम इस तरह के विधेयक का निर्माण करें जो देश में किसी को भी राइट टू इक्वैलिटी या असमानता नहीं हो रही हो, चाहे शिक्षा में हो रही हो, स्वास्थ्य में हो, नौकरी में हो या एजुकेशन में हो तो हम इक्वैलिटी कैसे दे सकें, इस संबंध में हम अपने दायित्व का निर्वहन करते हैं। निश्चित तौर से यह विषय अपने आप में महत्वपूर्ण है क्योंकि भारत के संविधान के निर्माताओं ने जिस समय संविधान का निर्माण किया, उन्होंने तमाम अनुच्छेदों का उल्लेख किया है, मैं समझता हूँ अगर किसी अनुच्छेद में जो अधिकार दिए गए हैं, चाहे फंडामेंटल राइट्स हों या आर्टिकल 19 हो, आर्टिकल 15 हो, राइट टू इक्वैलिटी की बात हो, आर्टिकल 21(ए) की बात हो, जो ये सारे अधिकार देश की जनता को दिये गये हों और वह जनता अगर किसी कारण से उन अधिकारों से वंचित है तो निश्चित तौर से यह सदन बहुत गंभीरता से विचार करेगा कि जिस संविधान की रक्षा के लिए हम इस सदन में हैं और उस संविधान के उस अनुच्छेद के अधिकारों से कोई इस कारण से वंचित रह जा रहा है कि वह ट्रांसजेंडर है या विपरीत लिंग में है तो मैं आपके माध्यम से जानना चाह रहा हूँ कि क्या किसी व्यक्ति के पास कोई मौलिक अधिकार है कि वह कहां पैदा होगा, किस राज्य में पैदा होगा, देश के किस हिस्से में पैदा होगा, देश के किस परिवार में पैदा होगा, किस मां की कोख से पैदा होगा और अगर पैदा भी होगा तो क्या उसको यह अधिकार है कि वह मेल के रूप में पैदा हो या फीमेल के रूप में पैदा हो, आखिर उस बच्चे का क्या गुनाह है कि अगर वह मेल या फीमेल पैदा नहीं हुआ, दुर्भाग्य से ट्रांसजेंडर पैदा हो गया तो इसमें निश्चित तौर से इस आधार पर कि अगर वह या तो पुरुष या स्त्री के रूप में उसका जन्म नहीं हुआ चाहे वो कोई भी परिस्थिति रही हो चाहे बायोलॉजिकल हो चाहे अन्य कारण हों, लेकिन उन कारणों के कारण वह पूरी जिन्दगी एक ट्रांसजी से गुजरे। पूरी जिन्दगी समाज में उपेक्षा के तानों से गुजरना पड़े, कहीं उसका बहिष्कार हो या परिवार उस अलग कर दे, उसके जीवन में अधिकार नाम की कोई चीज न हो और वह भी इसलिए कि इसमें उसकी कोई गलती नहीं है, तो निश्चित तौर पर मैं समझता हूँ कि यह हमारी जिम्मेदारी है और सरकार ने इस संबंध में कुछ प्रगतिशील कदम उठाए भी हैं। नेपाल की तरह अब भारत में भी पासपोर्ट के निर्माण में जहां अभी तक मेल या फीमेल का कॉलम होता था, वहीं एक कॉलम ट्रांसजेंडर का बनाने की बात हुई है। अभी तक किसी ट्रांसजेंडर को अगर पासपोर्ट बनाना होता था तो उसे मेल या फीमेल के कॉलम में टिक करना होता था, लेकिन वह पासपोर्ट लेकर दुनिया के किसी दूसरे देश में जाता है तो उसे दूसरी धरती पर किस तरह की स्थिति का सामना करना पड़ेगा या वहां की पुलिस की कार्यवाही का सामना करना पड़ेगा, इन परिस्थितियों को भी ध्यान में रखना जरूरी है। उनके लिए हर तरह की समानता होनी चाहिए उनके साथ भेदभाव नहीं होना चाहिए चाहे राइट टू लाइव की बात हो, चाहे व्यक्तिगत स्वतंत्रता की बात हो, चाहे राइट टू टिव इन दि कम्यूनिटी में हो या राइट टू इंटीग्रिटी की बात हो, उसे हर तरह से प्रोटेक्ट करने की बात होनी चाहिए। आज इनके पास कोई अधिकार नहीं है और अपने अधिकारों की रक्षा के लिए वह किस न्यायालय में जा सकता है। किसी कानून के अंतर्गत वह अपने अधिकारों की रक्षा करना चाहता है तो उसे ऐसा करने का हक मिलना चाहिए। इसे दूर करने के लिए एक ही उपाय है कि हम इस संबंध में जरूर कुछ करें। मैं आपका ध्यान आर्टिकल 15 की तरफ ले जाना चाहता हूँ।

"(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children. "

इस कानून ने यह भी कहा है कि इसके लिए राज्य के पास अधिकार होंगे कि वह स्पेशल प्रोविजंस का भी निर्माण करें। मैं आपके माध्यम से कहना चाहता हूँ कि अगर किसी भी व्यक्ति को हमारा संविधान अधिकार देता है कि रितीजन, रेस, कास्ट, सैक्स और बर्थ के आधार पर उसके साथ भेदभाव नहीं किया जा सकता है तो सैक्स कौन डिस्टाइड करेगा। अगर सैक्स में निश्चित तौर पर इसका उल्लेख होता कि मेल है या फीमेल है तो निश्चित तौर पर यह संविधान भारत में जो पुरुष या स्त्री के रूप में पैदा हुए हैं, उन्हीं के अधिकारों की रक्षा की बात करता। सैक्स में तो तीनों जेंडर हैं। अगर हम उनके लिए कोई कानून नहीं बनाते हैं तो एक तरह से हमारे संविधान के आर्टिकल 15 का ही अपने आप में कहीं न कहीं वायलेशन हो रहा है। इसी तरह से मैं अनुच्छेद 21-ए की तरफ आपका ध्यान आकर्षित करना चाहूंगा।

"The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

आखिर 21 ए में हम डायरेक्टिव प्रिंसिपल्स ऑफ स्टेट पॉलिसी को भी मानते हैं और इसमें यह भी है कि छः वर्ष से 14 वर्ष तक की उम्र के बच्चों को फ्री कम्पल्सरी एजुकेशन देते हैं। अभी पिछले दिनों

हमने आरटीई ऐक्ट भी पारित किया है ताकि लोगों को फ़ी और कमप्लसरी एजुकेशन मिले। जहाँ हम इस तरह के प्रगतिशील कदम उठा रहे हैं, संविधान में शिक्षा का मौलिक अधिकार दिया गया था, उस शिक्षा के मौलिक अधिकार को विर्यान्वित करने के लिए, उसे लागू करने के लिए हम अलग से एक विधेयक लेकर आए हैं। इसके लिए भारत सरकार संघीय ढांचे में एक बड़ी फंडिंग कर रही है। हर ब्लॉक्स में मॉडल स्कूल खुल रहे हैं, तो यह स्वाभाविक है कि जो ट्रांसजेंडर के लोग हैं, वे किस स्कूल में जाएंगे, जब तक इनके लिए कोई व्यवस्था न हो। या तो वे अपने सेक्स को छिपाने की कोशिश करेंगे, मेल अपने को फिमेल कहें या किन्हीं परिस्थितियों में वह स्कूल यह उल्लेख करता है कि वह मेल नहीं है या फिमेल नहीं है, तो उसे स्कूल से बाहर जाना पड़ता है। इस तरह की परिस्थितियाँ हों कि जब हम दुनिया के सामने बात करें कि हम से ज्यादा कोई प्रगतिशील नहीं है तो इस संबंध में हम निश्चित रूप से ऐसा करते हैं। उन्होंने बहुत-से राज्यों का उल्लेख किया है, मैं उनको दोहराना नहीं चाहता हूँ। जब आज हम इसकी चर्चा सब जगह कर रहे हैं, तो स्वाभाविक है, आज यह माना जाता है कि अगर कहीं भी डिनाइल ऑफ सोशल जस्टिस है, तो इसका मतलब है डिनाइल ऑफ इकोनॉमिक जस्टिस, डिनाइल ऑफ पोलिटिकल जस्टिस। यदि हम किसी को सामाजिक न्याय नहीं दे रहे हैं तो वह केवल इसी से नहीं अलग हो रहा है, बल्कि उसे हम आर्थिक रूप से भी विपन्न कर रहे हैं और राजनीतिक रूप से भी वंचित कर रहे हैं। यह उदाहरण हो सकता है कि जैसा कि हमारे पूरुद भाई ने कहा कि मध्य प्रदेश में विधायक या विधायिका के रूप में एक तयन हुआ, हम इसका स्वागत करते हैं। केरल में पुलिस में एक भारती हुई। लेकिन लाखों लोगों की संख्या में हम यह उदाहरण दें कि केरल में एक सब-इंस्पेक्टर बन गयी या बन गये या गोरखपुर में मेयर बन गयी या बन गये, तो इसका मतलब है कि अगर अवसर मिले तो ट्रांसजेंडर के लोगों में भी अपनी उपयोगिता को सिद्ध करने की योग्यता है, उनमें अपनी सार्थकता को सिद्ध करने की अपार संभावनाएँ हैं। उनमें यह क्षमता है कि वे अपने व्यक्तित्व से समाज में अपने को संदर्भित करते हुए अपनी उपयोगिता को सिद्ध कर सकते हैं। यदि लाखों लोगों में हम पाँच उदाहरण दें तो स्वाभाविक है कि उस प्रकार की तमाम संभावनाओं के बावजूद भी आज उनमें प्रतिभा रहती है। महाराष्ट्र की एक बात की गयी। महाराष्ट्र में पूरे लोगों को इकट्ठा करके ट्रैफिक की बात या तॉ एंड ऑर्डर मेन्टेन करने की बात हो, कहीं एसेम्बली हो रही हो, कहीं मेला हो रहा हो, कोई क्राउड हो, तो उस क्राउड में भी वे जिस प्रकार से रेगुलेट करने का काम कर रहे हैं, इसका मतलब है कि वे समाज के लिए एक लायबिलिटी नहीं हैं, वे समाज के लिए कोई अभिशाप नहीं हैं और न ही समाज के लिए कोई बोझ हैं। आज वे समाज के लिए एक एसेट हो सकते हैं। उनको एसेट बनाने में हमारी महत्वपूर्ण भूमिका हो सकती है। उनका जो अधिकार है, उसे उनको दिया जाए, उन अधिकारों से वे वंचित न हों, तो आज शिक्षा का अधिकार, स्वास्थ्य का अधिकार, रोजगार का अधिकार, नौकरी का अधिकार जैसे तमाम अधिकार वे चाहते हैं, तो इसके लिए देश में केवल एक ही माध्यम हो सकता है जब इसे हम एक विधेयक के रूप में लाएँ। आज ट्रांसजेंडर्स के सामने जितनी कठिनाइयाँ हैं, जितनी चुनौतियाँ हैं, वे आज जिस तरह से समाज में सफ़र कर रहे हैं, वे हॉस्पिटल्स में सफ़र कर रहे हैं।

18.00 hours

HON. CHAIRPERSON : Hon. Member, Shri Jagdambika Pal, it is six o'clock. You can continue with your speech the next time.

HON. CHAIRPERSON : Now, the House will take up 'Zero Hour'.